

### **REMARKS/ARGUMENTS**

#### **Regarding Amendments**

In the specification, the "Cross Reference to Related Applications" section has been amended to update the status of referenced applications. These corrections are of a clerical nature and do not add "new matter".

Claims 1-87 are now pending.

No claims stand allowed.

Claims 2, 24, 46, 55, 64, and 74 have been amended to further particularly point out and distinctly claim subject matter regarded as the invention. The text of claims 3-5, 25-27, 47-49, 56-58, 65-67, and 75-77 is unchanged, but their meaning is changed because they depend from amended claims. No "new matter" has been added by the amendment.

#### **The 35 U.S.C. § 101 Double Patenting Rejection**

The Examiner states:

Claims 1, 23, 45, 54, 63, 73, 82 and 85 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 9, 27, 46, 53, 59, 64, 82 and 85 of the US application (09/661,581), filed on 9/14/00. Claims 6-22 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 26, claims 28-44 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 28-44, claims 50-53 are rejected under 35 U.S.C. 101 as claiming the same invention as that of

claims 47-50, claims 59-62 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 54-57, claims 68-72 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 60, 61, 62, and 60, claims 78-81 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 65-68, claims 83-84 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 70-71, claims 86-87 are rejected under 35 U.S. C. 101 as claiming the same invention as that of claims 73-74 of the US application (09/661,581), filed on 9/14/00.<sup>1</sup>

This rejection is respectfully traversed.

According to 35 U.S.C. § 101, “whoever invents or discovers any new and useful process ... may obtain a patent therefore.”<sup>2</sup> The term “same invention,” in this context, means an invention drawn to *identical* subject matter.<sup>3</sup>

The independent claims (claims 1, 23, 45, 54, 63, 73, 82, and 85) of the present application recite in part:

said verification including determining binary compatibility of earlier program unit implementations with later program unit implementations.

Claims 6-22, 28-44, 50-53, 59-62, 68-72, 78-81, 83-84, and 86-87 of the present application are dependent claims and thus include this limitation.

Claims 9, 27, 46, 53, 59, 64, 82, 85, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 28-44, 47-50, 54-57, 60, 61, 62, 60, 65-68, 70-71, and 73-74

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<sup>1</sup> Office Action dated October 6, 2003, ¶ 3.

<sup>2</sup> 35 U.S.C. § 101.

<sup>3</sup> See *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). (emphasis added)

of U.S. Patent Application serial no. 09/661,581 do not recite verification including determining binary compatibility of earlier program unit implementations with later program unit implementations, so the '581 application and the present application are not drawn to *identical* subject matter. Accordingly, the Applicant respectfully requests the 35 U.S.C. § 101 rejection be withdrawn.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

#### Request for Allowance

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

#### Allowable Subject Matter

The Examiner is thanked for the kind finding of allowable subject matter in claims 2-5, 24-27, 46-49, 55-58, 64-67, and 74-77 if rewritten in independent form including all of the limitations of the base claim and any intervening claims. With this Amendment, claims 2-5, 24-27, 46-49, 55-58, 64-67, and 74-77 have been rewritten in independent form including all of the limitations of the base claim and any intervening claims. Accordingly, the Applicant respectfully submits claims 2-5, 24-27, 46-49, 55-58, 64-67, and 74-77 are in condition for allowance.

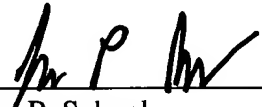
Appl. No. 09/661,582  
Amdt. dated: December 16, 2003  
Reply to Office Action of October 6, 2003

Docket No. SUN-P4182  
(811173-000118)

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Respectfully submitted,  
THELEN REID & PRIEST, LLP

Dated: December 16, 2003

  
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